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Title IX and School District Liability for Sexual Harassment by a Teacher: *Gebser v. Lago Vista Independent School District*

Kimberly D. Jones
Legislative Attorney
American Law Divison

Summary

In *Gebser v. Lago Vista Independent School District* the Supreme Court in a 5-4 decision addressed the issue of the liability of a school district when a student is sexually harassed by a teacher. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs or activities receiving federal funding. The Court held that under Title IX a school district is not liable for sexual harassment of a student by a teacher "unless an official of the school district who at a minimum has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct."[1] This report will not be updated.

Background

The U.S. Supreme Court recently decided the standard of liability that courts should apply in determining whether a school district should be held responsible for damages when a teacher sexually harasses a student. Justice O'Connor, writing for the majority in *Gebser v. Lago Vista Independent School District*, held that "damages may not be recovered [under Title IX for the sexual harassment of a student by one of the district's teachers] . . . unless an official of the school district who at a minimum has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct."[2]

Alida Gebser and her parents brought a sexual harassment lawsuit against Alida's high school teacher, Frank Waldrop, after it was discovered that Alida and Waldrop were having a sexual relationship. Waldrop established a relationship with Gebser while she was an eighth grader and a member of a high school book discussion group taught by

[1] Gebser v. Lago Vista Independent School Dist., 522 U.S. ____, 118 S. Ct. 1989, 1993 (1998).

[2] Gebser, 118 S. Ct. at 1993.

Waldrop. When Gebser began high school she was assigned to classes taught by Waldrop who often made sexually suggestive comments to Gebser and other students. He initiated the sexual relationship with Gebser while visiting her home on the pretense of delivering a book. In 1992, the parents of two other students complained to the principal about Waldrop's suggestive comments and Waldrop apologized and said it would not happen again. Waldrop received a warning from the principal, but the school district's superintendent who was also the district's Title IX coordinator, was never notified of the incident. Gebser never informed anyone, including her parents, about her relationship with Waldrop and Gebser's name did not come up in regard to the complaint. Gebser and Waldrop's relationship continued with the two often having sexual intercourse during class time, but not on school property. The relationship ended after they were discovered by police. Waldrop was criminally prosecuted, fired from his teaching position, and had his teaching license revoked by the state.

Gebser and her parents brought suit in state court against the Lago Vista School District and Waldrop. The suit alleged a violation of Title IX of the Education Amendments of 1972 and sought compensatory and punitive damages.[3] The case was moved to federal district court and summary judgment was granted in favor of the Lago Vista School District. The only issue on appeal was the dismissal of the Title IX claim. The 5th Circuit Court of Appeals affirmed the lower court decision holding that "school districts are not liable in tort for teacher-student harassment under Title IX unless an employee who has been invested by the school board with supervisory power over the offending employee actually knew of the abuse, had the power to end the abuse, and failed to do so."[4]

Summary of U.S. Supreme Court Decision in *Gebser v. Lago Vista Independent School District*

Title IX states in relevant part that, "No person in the United States, shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance . . . ."[5] The issue of sexual harassment was first addressed by the Court in the employment context. In *Meritor Sav. Bank, FSB v. Vinson*,[6] the Court held that "when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor discriminate[s] on the basis of sex.'"[7] Later, the Court in *Franklin v. Gwinnett County Public Schools*, relied on the rationale of *Vinson*, to find that when a student is sexually harassed by a teacher because of that student's sex, it is discrimination based on sex and violative of the anti-discrimination mandate of Title IX.[8] The Court has

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[3] 20 U.S.C.A. § 1681 (West 1990 & Supp. 1998).

[4] 106 F.3d 1226 (5th Cir. 1997).

[5] 20 U.S.C.A. § 1681.

[6] 477 U.S. 57 (1986).

[7] 477 U.S. at 64.

[8] 503 U.S. 60, 75 (1992).

held in past decisions that there is an implied private right of action under Title IX[9] and that monetary damages may be recovered.[10] However, the question was left open as to what standard should apply to determine when damages should be awarded. The Gebsers urged the Court to apply the same standard of liability to a school district that it has applied to employers. In the employment context, the Court has applied principles of agency law where the employer may be held responsible for the acts of its agent, i.e. employee, when that agent is performing his official duties.[11] Employers may be held liable even if they are unaware of the employee's acts. The Gebsers argued that "in light of [*Franklin v. Gwinnett County Public School's*] comparison of teacher-student harassment with supervisor-employee harassment, agency principles should likewise apply in Title IX actions."[12]

The Gebsers evince two standards that the Court should apply when determining whether damages should lie under Title IX when a teacher harasses a student. The first is the *respondeat superior* standard that would hold the school district liable "whenever a teacher's authority over a student facilitates the harassment."[13] Liability would exist regardless of whether the school district was aware of the harassment and regardless of any action the school district may take upon becoming aware. This is the same standard supported by the U.S. Department of Education and described in its 1997 Policy Guidance on Sexual Harassment.[14] In the alternative, the Gebsers argue that a school district should be liable "where the district knew or 'should have known' about the harassment but failed to uncover and eliminate it."[15] The Court referred to this as the "constructive notice" standard.

Justice O'Connor, writing for the majority, first addressed the Gebsers' attempt to apply principles established in sexual harassment cases brought under Title VII of the Civil Rights Act of 1964[16] to Title IX. First, Justice O'Connor found that the definition of "employer" in Title VII included "any agent" of that employer, but similar language did not exist in Title IX. Second, the Court pointed out that unlike Title VII, Title IX does not contain an express cause of action, nor does it specifically provide for monetary damages. Justice O'Connor went on to say that because the private right of action in Title IX was implicit rather than explicit, the Court has great latitude in shaping an appropriate remedy. However, that remedy "must be reconciled with congressional purpose."[17] The Court determines congressional purpose by attempting to discern what Congress would have intended if the issue had been addressed when Title IX was enacted. The Court concluded

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[9] Cannon v. University of Chicago, 441 U.S. 677 (1979).

[10] Franklin v. Gwinnett County Public Schools, 503 U.S. 60 (1992).

[11] See Faragher v. City of Boca Raton, 522 U.S. ____ (1998); Meritor Sav. Bank, FSB v. Vinson, 477 U.S. 57(1986); Restatement (Second) of Agency § 219(2)(d) (1957).

[12] 118 S. Ct. at 1995.

[13] Id.

[14] 62 Fed. Reg. 12034 (1997).

[15] 118 S. Ct. at 1995.

[16] 42 U.S.C.A. § 2000e et seq. (West 1994 & Supp. 1998).

[17] 118 S. Ct. at 1996.

that "it would 'frustrate the purposes' of Title IX to permit a damages recovery against a school district for a teacher's sexual harassment of a student based on principles of *respondeat superior* or constructive notice, i.e., without actual notice to a school district official."[18] The Court pointed to several factors to support its conclusion that "Congress did not intend to allow recovery in damages where liability rests solely on principles of vicarious liability or constructive notice."[19] Justice O'Connor compared Title VII and Title IX, since Title VII was the only civil rights statute in existence when Title IX was enacted. She noted that Title VII, as originally enacted, did not allow for recovery of monetary damages. Damages were later allowed under Title VII, but the amount of damages was capped. Instead, Justice O'Connor found that Title IX was more analogous to Title VI of the Civil Rights Act. Title VI forbids discrimination based on race in programs receiving federal funding. The Court found that similar to Title VI, Title IX created a contract between the government and the recipient that the recipient would not discriminate. Further, Justice O'Connor concluded that "whereas Title VII aims centrally to compensate victims of discrimination, Title IX focuses more on 'protecting' individuals from discriminatory practices carried out by recipients of federal funds." The Court found that the contractual relationship of Title IX required that recipients of federal funds be on notice that they may be responsible for a monetary award. Justice O'Connor points out that the enforcement mechanism of Title IX requires actual notice to funding recipients and an opportunity to correct any violation. A reliance on agency principles would necessarily result in a recipient being held liable for acts they may not be aware of.[20] According to Justice O'Connor, Title IX's enforcement mechanism "avoid[s] diverting education funding from beneficial uses where a recipient was unaware of discrimination in its programs and is willing to institute prompt corrective measures."[21] Justice O'Connor also noted that the penalty for a Title IX violation is loss of federal funding, while a damages award may exceed the amount of federal funds. Finally, Justice O'Connor concluded that "[b]ecause the express remedial scheme under Title IX is predicated upon notice to an 'appropriate person' and an opportunity to rectify any violation, [the Court concludes], in the absence of further direction from Congress, that the implied damages remedy should be fashioned along the same lines."[22] An appropriate person must be "at a minimum, an official of the recipient entity with authority to take corrective action to end the discrimination."[23] If an appropriate person is notified of the discrimination, liability will lie only if the person responds "with deliberate indifference to discrimination." Deliberate indifference was described as, "an official decision by the recipient not to remedy the violation."[24] Applying this standard to the Gebsers' case, the plaintiff would not be entitled to monetary damages because an appropriate official was never notified. However, the Gebsers pointed out that Lago Vista never instituted a policy regarding the handling of sexual harassment claims as required by the Department of

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[18] 118 S. Ct. at 1997.

[19] 118 S. Ct. at 1998.

[20] Id.

[21] 118 S. Ct. at 1999.

[22] Id.

[23] Id.

[24] 118 S. Ct. at 1999.

Education's regulations.[25] However, the Court found that the failure of Lago Vista to create a sexual harassment policy did not rise to the level of actual notice or deliberate indifference. Further, the Court found that the lack of a sexual harassment policy was not alone evidence of discrimination. However, the Department of Education would still be able to enforce the policy requirement administratively. Finally, the Court noted that this decision does not preclude a student from pursuing redress under any applicable state law.

Justice Stevens wrote a dissenting opinion which was joined by Justices Souter, Ginsburg, and Breyer.[26] Justice Stevens agreed with the majority that Title IX was analogous to Title VI, but disagreed that the lack of an explicit remedy in Title IX should act to limit liability for damages under the Act. Stevens noted that in the Court's previous decision in *Franklin*, the Court relied on the presumption that unless otherwise indicated, "Congress intends to authorize 'all appropriate remedies.'"[27] Stevens also pointed to Congress' enactment of amendments to Title IX that indicate Congress' intent to not limit remedies available under Title IX.[28] Stevens argued that agency principles should apply and that "the district is responsible for Waldrop's misconduct because 'he was aided in accomplishing the tort by the existence of the agency relation.'"[29] Stevens also pointed out the Department of Education, the agency responsible for enforcing Title IX, has advocated this standard of liability. According to Justice Stevens,

> This case presents a paradigmatic example of a tort that was made possible, that was effected, and that was repeated over a prolonged period because of the powerful influence that Waldrop had over Gebser by reason of the authority that his employer, the school district, had delegated to him. As a secondary school teacher, Waldrop exercised even greater authority and control over his students than employers and supervisors exercise over their employees. His gross misuse of that authority allowed him to abuse his young student's trust.[30]

Further, Stevens argued that the "Congress included the prohibition against discrimination on the basis of sex in Title IX: to induce school boards to adopt and enforce practices that will minimize the danger that vulnerable students will be exposed to such odious behavior."[31] However, Stevens lamented that the rule adopted by the majority undermines this purpose since "school boards can insulate themselves from knowledge about this sort of conduct" and escape liability.[32]

The dissent attacked the reasoning of the majority. First, Stevens dismissed the majority's look back at the Congress when Title IX was enacted and the limited remedies

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[25] 34 C.F.R. § 106.8(b) (1997).

[26] 118 S. Ct. at 2000-2007.

[27] 118 S. Ct. at 2001 (quoting Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 66 (1992)).

[28] 118 S. Ct. at 2002.

[29] 118 S. Ct. at 2003.

[30] 118 S. Ct. at 2004.

[31] Id.

[32] Id.

provided under civil rights law at the time, since the Court already had addressed that issue and held that remedies should be available under Title IX in its decision in *Franklin.*[33] Second, the dissent rejected the notion that the school district did not have adequate notice of a possible monetary award for a violation of Title IX because *Franklin* put school districts on notice. Finally, the dissent found inappropriate, the majority's reliance on the administrative scheme of Title IX and noted that the standard of the majority equates to no remedy under Title IX for student victims of sexual harassment.[34]

Justice Ginsburg wrote a separate dissenting opinion, which was joined by Justices Souter and Breyer. While Justice Ginsburg agreed with Justice Stevens' dissent, she argued that a school district should be able to use as an affirmative defense the fact that it has an effective and well-publicized policy on reporting and addressing sexual harassment. Ginsburg argued:

> The burden would be the school district's to show that its internal remedies were adequately publicized and likely would have provided redress without exposing the complainant to undue risk, effort, or expense. Under such a regime, to the extent that a plaintiff unreasonably failed to avail herself of the school district's preventive and remedial measures, and consequently suffered avoidable harm, she would not qualify for Title IX relief.[35]

The reaction to the *Gebser* decision has been mixed. Some have criticized the decision for creating too high a standard for alleged student-victims of sexual harassment.[36] U.S. Secretary of Education, Richard W. Riley issued a statement after the *Gebser* decision, that although a school district may not be liable for monetary damages for the sexual harassment of a student by a teacher, such behavior is still discrimination under Title IX, and federal education funding may be affected by such incidents.[37] However, the National School Boards Association (NSBA) and school districts across the country welcomed the Court's decision in *Gebser*. The NSBA filed a friend of the court brief on behalf of the Lago Vista School District arguing "that imposing a tougher standard would not deter similar harassment because school districts cannot predict this kind of behavior."[38]

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[33] 118 S. Ct. at 2005.

[34] Id.

[35] 118 S. Ct. at 2007.

[36] Lyle Denniston, *Limits Set On Sexual Suits*, The Baltimore Sun, June 23, 1998, at 1A; Jan Crawford Greenburg, *Top Court Shields Schools in Harassment Case*, Chicago Tribune, June 23, 1998, at 1.

[37] Statement By U.S. Secretary of Education Richard Riley, July 1, 1998.

[38] Jan Crawford Greenburg, *Top Court Shields Schools In Harassment Case*, Chicago Tribune, June 23, 1998, at 1; Mark Walsh, *High Court Limits District Liability on Harassment*, Education Week, June 24, 1998.